



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

ELP
Docket No. 4763-00
13 December 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 December 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 30 August 1973 for four years at age 18. The record reflects that you served for 11 months without incident. However, during the seven month period from June 1974 to January 1975 you were convicted by two special courts-martial and received a nonjudicial punishment (NJP). Your offenses consisted of two periods of unauthorized absence (UA) totalling about 91 days and failure to go to your appointed place of duty.

In February 1975 you began a series of three UAs from 4 February 1975 to 17 May 1976, 18 May to 25 November 1976, and 7 January to 20 April 1977. On 5 May 1977 you submitted a request for discharge under other than honorable conditions for the good of the service to escape trial by court-martial for these three periods of UA totalling about 766 days. Prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. A staff judge advocate reviewed your request and found it to be

sufficient in law and fact. On 12 May 1977 the discharge authority directed discharge under other than honorable conditions. You were so discharged on 20 May 1977.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, your need for medical benefits because of diabetes, and the fact that it has been more than 33 years since you were discharged. The Board concluded that these factors were insufficient to warrant recharacterization of your discharge given your record of an NJP, convictions by two special courts-martial, and the fact that you accepted discharge rather than face trial by court-martial for three periods of UA totalling more than two years. Your need for medical benefits because of diabetes is unfortunate but does not provide a valid basis for recharacterizing service. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director